

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.06.2007

C O R A M :

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.A.Nos. 193 & 194 of 2007
and connected Miscellaneous Petitions

M/s. Chemfab & Alkalies Limited
Gnanandha Place
Kalapet, Pondicherry 605 014
rep. By its Company Secretary
Mr. S. Ramanujam.

... Appellant in both the appeals

-vs-

1.District Magistrate-cum-District Collector
Office of the District Magistrate
Pondicherry.

2.Joint Chief Controller of Explosives
Chennai.

3.M/s. Bharat Petroleum Corporation Ltd.,
35 Vaidyanathan Mudali Street
Chennai 600 081 rep. By its
Territory Manager (Retail).

4.Sekar
Sunbeam Electronics
M.G. Road, Pondicherry.

5.Mrs. L. Pourt Pavai .. Respondents in WA.193/2007

1. Joint Chief Controller of Explosives
Chennai.

2. District Magistrate-cum-District Collector
Office of the District Magistrate
Pondicherry.

3. M/s. Bharat Petroleum Corporation Ltd.,
35 Vaidyanathan Mudali Street
Chennai 600 081 rep. By its
Territory Manager (Retail).

4. Mrs. L. Pourt Pavai .. Respondents in WA.194/07
Writ Appeals filed under Clause 15 of Letters Patent against the
common order of the learned single Judge dated 30.11.2006 made in
W.P.Nos.32655 of 2005 and 5452 of 2006 respectively

W.P.Nos.32655 of 2005 - to issue a writ of certiorarified mandamus
calling for the records relating to the No Objection Certificate issued
by the first respondent, on 31.8.2005, bearing No.12505/DM/20/D3/2005,
in favour of the third respondent, quash the same, and to forbear the
respondents from permitting or setting up any petroleum retail outlet
near the vicinity of the petitioner's factory at Kalapet, Pondicherry
and particularly at R.S.No.130/3A of 21, Pillachavadi Revenue Village,
Pondicherry.

W.P.No.5452 of 2006 - to issue a writ of Certiorari to call for the
records of the licence, dated 28.10.2005, vide Licence No.P/SC/PY/14/110
(P136235), issued by the first respondent in favour of the third
respondent and to quash the same.

For appellant :: Mr. G. Rajagopalan, Sr.Counsel
in both the appeals for M/s. G.R. Associates

For respondents :: Mr. K.K. Sasidharan
Addl. Govt. Pleader (Pondy) for R.1
in WA.193/07 and R.2 in WA.194/07.
Mr. Patti B. Jegannathan for R.2
in WA.193/07 and R.1 in WA.194/07.
Mr. K. Ethiraj for R.3 in both
the Appeals
Mr. K. Raja Srinivasan for R.4 and R.5
WA.193/07 and R.4 in WP.194/07.

COMMON JUDGMENT

(DELIVERED BY P.JYOTHIMANI,J.)

These writ appeals are directed against the common order of the
learned single Judge dated 30.11.2006 made in W.P.Nos.32655 of 2005 and
5452 of 2006, filed by the appellant, challenging the No Objection
Certificate issued by the District Magistrate-cum-District Collector,
Pondicherry, second respondent herein in favour of M/s. Bharat Petroleum
Corporation Ltd., Chennai, third respondent, for setting up a petroleum
retail outlet at R.S.No.130/3A of 21, Pillachavadi Revenue Village,
Pondicherry and also to quash the licence issued by the first
respondent, Joint Controller of Explosives, Chennai dated 28.10.2005, in
favour of the third respondent.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The case of the appellant, who is a manufacturer of Caustic Soda
and producers of Hydrochloric Acid, Sodium Hypo Chlorite and Liquid

Chlorine, is that the said Liquid Chlorine is classified as hazardous and should be kept away from potential fire sources. When the appellant Company came to know that in the adjoining site, abutting the compound wall of the appellant's factory, the proposed petroleum retail outlet was sought to be given to the third respondent, a representation was submitted to the Collector of Pondicherry, the second respondent, raising objection with regard to the setting up of the petroleum retail outlet on the ground that the Hydrogen and Chlorine stored by the appellant Company are highly inflammable and it is very dangerous to locate a petrol bunk near its factory. According to the appellant, there was no personal enquiry on the representation, however, No Objection Certificate was issued in favour of the third respondent and the 4th respondent came to be appointed as a Dealer for the retail outlet. This has resulted in filing of the writ petitions. The first respondent has filed a counter affidavit stating that the procedure contemplated under the Petroleum Rules, 2002 have been followed strictly and as per the Rules, there is no provision for granting personal hearing relating to the objections raised by the appellant Company before issuing licence. The District Collector, after referring to the application and having satisfied with the fulfilment of the requirements, has recommended for establishment of petrol bunk at the proposed site. The further case of the first respondent is that the appellant's factory being a "hazardous establishment" functioning under various licences of Government of Pondicherry and as per various Acts and Rules, and the appellant factory is taking all precautionary measures and the State authorities are making periodical inspections. It is also stated that the distance between the storage of the Liquid Chlorine of the appellant's factory and the proposed underground storage of petroleum products is 130 meters away and there is no possibility of any danger. It is, after considering the said averments made by both parties, and taking into consideration that No Objection Certificate was issued in accordance with Rules and safety measures have been taken, the learned single Judge, has dismissed the writ petitions. It is, as against the said dismissal order, the present appeals are filed.

3. We have heard the learned counsel for the appellant as also the respondents.

4. The learned senior counsel Mr. G. Rajagopal has contended that in spite of the fact that the appellant has objected to the setting up of a petroleum retail outlet in the adjoining property, which is only 130 meters away and considering the fact that the nature of chemicals and acids stored and dealt with by the appellant's factory, starting of petroleum retail outlet in the near vicinity will be a potential fire source and therefore, an objection was raised and it was the duty on the part of the first and second respondents to have enquired properly and considering the representation in proper manner before giving No Objection Certificate, since it is a matter involving probable accident and public safety.

5. On the other hand, Mr. K.K. Sasidharan, learned Additional Government Pleader for Pondicherry, appearing for the first respondent even though contends that No Objection Certificate as well as licence was issued only after inspection, could not substantiate that proper enquiry was conducted, especially when an objection was raised by the

appellant, who is admittedly carrying on business, since untoward incident may result in unwanted consequences.

6. In view of the above said circumstances, we set aside the common order of the learned single Judge dated 30.11.2006 made in WP.Nos.32655 of 2005 and 5452 of 2006, and direct the first respondent, viz., Joint Chief Controller of Explosives, Chennai, to consider the representation of the appellant, including the contents of the affidavit filed by the appellant raising various objections about starting of a petroleum retail outlet on the neighbouring side of the appellant's factory and pass appropriate order in accordance with law, after affording opportunity to the appellant within a period of four weeks from the date of receipt of a copy of this order. The appellant is directed to submit their further representation and appear in person before the first respondent, Joint Chief Controller of Explosives, Chennai, within one week from today, i.e., on 18.06.2007 at 11.00 am and thereafter, the first respondent shall pass appropriate orders as stated above.

The writ appeals are disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The District Magistrate-cum-District Collector
Office of the District Magistrate
Pondicherry.

2.The Joint Chief Controller of Explosives
Chennai.

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3.The Territory Manager (Retail).
M/s. Bharat Petroleum Corporation Ltd.,
35 Vaidyanathan Mudali Street
Chennai 600 081

+ 1 CC To Mr. K.Raja Srinivas, Advocate SR NO.33642'

+ 1 CC To Mr.B.Jegannathan, SCGSC, SR NO.33532

+ 1 CC To Mr. K.Ethiraj, Advocate SR NO.33430, 33431

+ 2 CC to the Sr. Government Pleader cum Sr. Public Prosecutor,
Pondicherry, SR Nos 33680, 33679

W.A.Nos.193 & 194 of 2007

ssv[co]
Gp/22.6



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